

Name: Bret G. MacArthur, 194568
Address: P.O. Box 250, Draper, Utah 84020
Telephone:

RECEIVED CLERK

FILED
U.S. DISTRICT COURT
FEB 24 2015
U.S. DISTRICT COURT
2015 APR -3 P 3:49

DISTRICT OF UTAH
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central DIVISION DEPUTY CLERK

Bret Golden MacArthur
(Full Name) pro se
PLAINTIFF

vs.

Richard Garden md
Utah State Prison
Utah Department of Corrections
*Complete List on Parties sheet
DEFENDANTS (PI)

CIVIL RIGHTS COMPLAINT
(42 U.S.C §1983, §1985)

Case: 2:15cv00117
Assigned To : Benson, Dee
Assign. Date : 2/24/2015
Description: MacArthur v. Garden et al

A. JURISDICTION

1. Jurisdiction is proper in this court according to:

- a. X 42 U.S.C. §1983
b. 42 U.S.C. §1985
c. Other (Please Specify)

2. NAME OF PLAINTIFF Bret Golden MacArthur
IS A CITIZEN OF THE STATE OF Utah

PRESENT MAILING ADDRESS: P.O. Box 250
Draper, Utah 84020

3. NAME OF FIRST DEFENDANT Richard Garden MD
IS A CITIZEN OF Salt Lake, Utah
(City and State)

IS EMPLOYED AS Director UHC Bureau of Clinical Services at UHC.
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO ☐. If your answer is "YES" briefly explain.

Employed as Director of UHC Bureau of Clinical Services.

4. NAME OF SECOND DEFENDANT Kenneth Tubbs MD
(If applicable)

IS A CITIZEN OF Salt Lake, Utah
(City and State)

IS EMPLOYED AS Doctor at UHC.
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO ☐. If your answer is "YES" briefly explain.

Employed as Doctor at ^{USP} UHC, Draper

5. NAME OF THIRD DEFENDANT Aaron Douglas, RN
(If applicable)

IS A CITIZEN OF Salt Lake, Utah
(City and State)

IS EMPLOYED AS Triage Nurse at UHC.
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES X NO ____ . If your answer is "YES" briefly explain.

Employed as a nurse at USP, Draper

6. NAME OF FOURTH DEFENDANT Ford Fannon, EMT
(If applicable)

IS A CITIZEN OF Salt Lake, Utah
(city and State)

IS EMPLOYED AS Medical Technician at USP.
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES X NO ____ . If your answer is "YES" briefly explain.

Employed as a med tech at USP, Draper

* For complete list of parties please see parties
Sheet (PI)

(Use additional sheets of paper if necessary.)

B. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem.

Defendants were deliberately indifferent to
the plaintiffs serious medical needs then conspired
to cover it up then retaliated against him
for filing grievances to get to the Courts.

C. CAUSE OF ACTION

1. I allege that my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary you may attach additional pages)

a. (1) Count I: Deliberate Indifference to Plaintiffs
Serious medical need

(2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing legal authority or arguments.)

Between Aug. 30th and Sept. 7th, 2011

The defendants failed to treat plaintiffs
kidney stone that put him in renal
failure

* Continued on sheets C1-1 thru C1-X

b. (1) Count II: Deliberate Indifference to plaintiffs
Serious medical need

(2) Supporting Facts: Between Sept. 1st and Sept.
5th, 2011 Defendants failed to treat plaintiffs
allergic reaction to an antibiotic.

* Continued on sheets C2-1 thru C2-X

c. (1) Count III: Deliberate Indifference to Plaintiffs
Serious medical need and retaliation for seeking
medical care

(2) Supporting Facts: A foley catheter was placed
into plaintiffs bladder on Sept 8, 2011 and
was infected and ulcerated for weeks without
being treated or removed by the defendants

(continued on sheets C3-1 thru C3-2)
- See Also counts 4 and 5 on sheets C4-X and C5-X

D. INJURY

1. How have you been injured by the actions of the defendant(s)?

- a) Permanant loss of half of my kidney function
- b) Respiratory Distress for 4 days
- c) Pain from kidney stone for 8 days
- d) Pain from ulcer on penis for more than 3 weeks
- e) Permanant Distfiguration of Urethra opening
- f) Diareah and Vomiting for 6 days untreated
* Continued on Injury sheet D

E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action or otherwise relate to the conditions of your imprisonment?
YES ___ / NO X. If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

a. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

b. Name of court and case or docket number: _____

- c. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- d. Issues raised: _____

- e. When did you file the lawsuit? _____
 Date Month Year
- f. When was it (will it be) decided? _____
2. Have you previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C? YES X / NO _____. If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.
Grievance # 990880691 through Level 3
Grievance # 990889292 through Level 3
Grievance # 990889554 through Level 3
Grievances 990888607, 990888609,
Unrecorded grievance filed 8/1/14 against
Captain Hughes and Lieutenant Green.
Grievance # 99088847 through Level 3

F. REQUEST FOR RELIEF

1. I believe that I am entitled to the following relief:

Declaratory

Injunctive

Compensatory

Punitive

Any other relief the court deems proper
See details on pages F1 - Fx

Parties

Plaintiff, Bret G. MacArthur, at all times relevant, was confined in the Utah State Prison (USP) by the Utah Department of Corrections (UDC) in Draper, Utah.

Defendants:

Richard Garden M.D., Director of UDC Bureau of Clinical Services
Kennon Tubbs M.D., Medical Doctor at USP Draper
Aaron Douglas R.N., Triage Nurse at USP Draper
Wayne A. Freestone, Contract Atty. for USP, Draper
David J. Angerhofer, Contract Atty. for USP, Draper
Jared Bronsky EMT
Jason McClellan EMT
David Evans EMT
Seth Drew EMT
Scott Holman EMT
Ford Fannon EMT
The Utah Department of Corrections (UDC)
The Utah State Prison in Draper, Utah (USP)
Sydney Roberts M.D., medical Doctor at USP, Draper
Logan Clark, PA at USP, Draper

John Does 1-20

Defendants, at all relevant times, were acting under color of state law and are being sued in their official and individual capacities

- 1 Plaintiff is knowledgeable of Emergency Medicine having been a Certified EMT for 16 years. His EMT license Number ^{was} 982914. He was a Volunteer with Springville City Ambulance for 5 years helping care for over 500 patients from 1998 thru 2003.
- 2 On 1/26/10 in a medical interview conducted by Raymond Merrill, P.A. Plaintiff disclosed his history of kidney stones and kidney disease resulting in decreased kidney function. P.A. Merrill stated an intent in the medical record to follow up with records and labs. Medical records show that labs were done but no medical records were obtained.
3. On 8/30/2011 plaintiff informed Jeremy Wendler, EMT that he was experiencing Lower, Left side, abdominal pain (flank pain) which he associated, from a previous experience, with a kidney stone. EMT Wendler refused to send me to the infirmary, or perform an examination, or give me anything for pain. He told me if I needed to see a doctor to put in a Health Care Request (HCR).

4. Over the next 2 days the plaintiff turned in

3 HCR's stating:

- Having left flank pain, I would like to rule out another kidney stone
- I am experiencing left flank pain 2-3/10 @ 11 AM and would like to rule out another kidney stone
- I have left flank pain 7/10 and on tylenol. I believe I have a kidney stone. I have had 5 stones in the past that have been removed surgically. I am in stage 4 renal failure

5. None of these health care requests prompted a move to the infirmary or any other medical care.

6. On Thursday 9/1/2011 after I informed EMT Wendler of my worsening condition. I observed him call the infirmary. According to medical records he spoke with Aaron Douglas, RN who had him collect a urine sample and perform a dip test. From the results of the dip test, RN Douglas diagnosed me with a urinary tract infection which diagnosis was confirmed by Kennon Tubbs, MD. Neither RN Douglas nor Dr. Tubbs examined me for this complaint. Both

RN Douglas and Dr. Tubbs know from my medical records of my history of kidney stones and kidney disease.

7. From ^{plaintiff's} ~~my~~ previous experience with kidney stones he knows that a simple X-Ray or ultra sound would detect his kidney stones.
8. Contacted EMT's and 1 nurse daily informing them of my pain and serious need for medical care. I also contacted Sgt. Gurney and Lt. Demill and other officers on Charlie block. I also contacted Sgt. Larsen and Sgt. Drake where I worked in the chapel. None of these efforts got me seen by medical staff who could make a diagnosis of a kidney stone. This was all of the ways I knew of to access Emergency medical care per ICR form. (Inmate Care Request)
9. From 9/2/2011 thru 9/8/2011 I could not pee, I could hold down no food throwing up around 6 times a day, I had water like diarrhea, I was in tremendous pain between 5 and 8 out of 10 the entire time, and I was unable to sleep. All of this communicated daily to EMT's and once to a nurse but no treatment was given and they would not take me to the infirmary. C1-3

10. On 9/8/2011 plaintiff was seen in the infirmary by P.A. Jettavies. A blood test was performed which showed that plaintiff had essentially no kidney function. He was immediately taken to the University of Utah Medical Center where tests revealed that he had multiple kidney stones and was in acute renal failure. Surgery was performed that night to remove the stones. ~~and put in~~
11. ~~Due to~~ Defendants deliberate indifference to plaintiff's serious medical need for those ~~9~~ days resulted in the permanent loss of half of plaintiff's kidney function.
12. Richard Garden M.D. was deliberately indifferent to my serious medical need by permitting budget and staffing to decrease each year for the last five years while the number of inmates and the age of those inmates has been going up leaving insufficient resources to diagnose and treat my kidney stones.
13. Dr. Garden has set policies and set up training for EMTs to act as gatekeepers to definitive medical care. These policies are insufficient

and the EMT's are not qualified even with trainings to properly diagnose kidney stones or kidney failure. He has these EMT's operating outside of their licensed scope of practice which caused my kidney stones to go undiagnosed or treated for 9 days.

14. All EMT's and the nurse I contacted for Emergency medical care were deliberately indifferent to my serious medical need by knowingly operating outside their licensed scope of medical practice and failing to properly diagnose and treat my kidney stones or failing to get me to definitive medical care for a proper diagnosis and treatment resulting in my kidney stones doing damage for 9 days and leading to my kidney failure.

15. All EMT's and the nurse I contacted for Emergency medical care are guilty of ^{deliberate indifference by} ~~abandonment~~ ^{Abandonment} by not getting me to sign a waiver or getting me to a higher caliber of medical care. This abandonment resulted in the loss of half of my kidney function.

16. Dr. Garden was deliberately indifferent to my serious medical need by failing to properly train and supervise the medical technicians on when to send an individual to see a doctor.
17. Plaintiff was told by defendants on 9/2/2011 that it would be impossible to see a doctor before 9/6/14 as it was a holiday weekend. Failure to staff medical care over holiday weekend demonstrates deliberate indifference.

1. On 9/2/2011 plaintiff was prescribed Septra antibiotic to be taken twice a day for a supposed UTI.
2. After taking the Septra, Plaintiff experienced an allergic reaction to the medication including swelling of his neck and difficulty breathing.
3. Plaintiff reported these symptoms to John Doe, EMT who, without checking vitals or ~~performing~~ any other examinations, told him there was nothing wrong with him and would not change his medication, send him to the infirmary or even note the allergic reaction in plaintiff's medical record.
4. That night the plaintiff's respiratory distress became so acute that he stopped the block officers during count and requested Emergency medical care.
5. John Doe EMT was called to plaintiff's cell and after checking his pulse and oxygen saturation at his blood declared that he was fine and would not give plaintiff oxygen, antihistamines, nor would they take him to the infirmary to monitor his condition.

6. Plaintiff stopped taking Septra but still experienced lingering effects that night preventing sleep. Plaintiff reported stopping medication to John Doe EMT the next day.
7. On 9/5/2011 plaintiff was told by John Doe EMT that if he did not take the Septra he would never get into the infirmary because he wasn't doing as he was told.
8. Plaintiff, desperate for medical care and hoping he was mistaken about the cause of his respiratory distress took 1 dose of Septra.
9. Night of 9/5-9/6/2011 plaintiff's throat again swelled up and he was again in respiratory distress. He again stopped an officer during night counts and a John Doe EMT again came and checked his pulse and oxygen saturation but gave no treatment and now continued monitoring plaintiff's condition.
10. Respiratory distress symptoms again lasted for two days.

11. Plaintiff was assured by John Doe EMT that if he were to pass out or die ~~he was~~ from respiratory Exhaustion he would be taken to the infirmary. Plaintiff does not know how they would have known he was passed out as opposed to sleeping. He was not willing to test EMT's assertion.
12. My allergy was never noted in my medical file, I was never seen by medical staff and I never received any treatment for my allergic reaction to Septra.

1. During plaintiff's surgery to remove his kidney stones on 9/8/11 the surgeons placed a Foley catheter through his penis and into his bladder to be able to measure urine flow and to prevent blockage.
2. After leaving the hospital on 9/10/2011 no measurement of urine flow was ever taken.
3. Pain of 5 or 6 out of 10 and of a very sharp nature that began to inhibit my sleep. This pain started the second week after leaving the hospital and plaintiff contacted John Doe East for medical care to have the catheter removed.
4. On 10/1/2011 plaintiff was seen by Logan Clark P.D. who determined that the tip of plaintiff's penis was ulcerated and infected but would not remove the catheter or send plaintiff to UMMC to be evaluated by a urologist.
5. Plaintiff's catheter was removed by UMMC urologists on 11/18/14 but too late to prevent permanent disfigurement of his urethra opening. 71 days after surgery.

6. Plaintiff is concerned that this disfigurement will inhibit his ability to father children in the future.
7. The Urologist had instructed that the catheter was to be removed in three weeks not 10 weeks. Since no contrary opinion by prison doctors was ever entered the defendants failure to carry out the urologists instructions constitutes deliberate indifference to my serious medical need.
8. Dr Roberts, as ^{the} ~~my~~ doctor overseeing my care at USP, should have seen that the catheter was removed in a timely manner.

C

Count 4: Conspiracy to falsify medical
Records

1. On 9/1/2011 Jeremy Wendler, EMT and Aaron Douglas, RN agreed to engage in a conspiracy to falsify plaintiff's medical record by having EMT Wendler collect and test a urine sample from plaintiff while having Aaron Douglas, RN record in the medical record as if he had seen the plaintiff, collected the sample and performed the test.
2. This conspiracy was intended to shield Wendler and Douglas from evidence of their deliberate indifference to plaintiff's serious medical need.
3. Between Dec 2, 2011 and Sept 19, 2014 persons known only to the defendants agreed to engage in a conspiracy to delete plaintiff's medical records of plaintiff's attempts to obtain medical care for his kidney stone and allergic reaction to medication.
- 5A. This conspiracy shielded defendants mentioned on those records from being sued in this action.

C4-1

4. On 9/7/11 at 8:00 AM an incident Report was filed by Block officers, Sgt. Jason Gurney and Lt. Kent Demill. Incident report states that medical staff was notified but there is nothing in plaintiff's medical records of this incident.

6. Between Aug. 30, 2011 and Sept 7, 2011 ^{persons} ~~parties~~ known only to the defendants agreed to engage in a conspiracy by not recording in the plaintiff's medical chart some of the times and ways he sought medical care for his serious medical need thus shielding these persons from prosecution for their deliberate indifference. Failure to keep accurate medical records is deliberate indifference.

Count 5 - Retaliation for a constitutionally protected activity.

1. On 7/10/14, Plaintiff filed a grievance about the housing policy on the Oquirrh 5.
2. The officers over this block, at the time, were Detendan, Lt. Green and Cpt. Hughes.
3. On 7/14/14 Lt. Green came to my bunk, told me I was a trouble maker, threatened to move me off the block, threatened to take my privilege and lockdown levels, all in a loud voice and threatening demeanor.
4. Sgt. Hutchingson witnessed this event.
5. Later the same day I was called down to the office and told by Lt. Green that he was thinking of putting the unit on restriction because of me.
6. On 7/14/14 I filed a second grievance about the threats and intimidation in retaliation for the first grievance as listed above.
7. On or about 7/24/14 I was called into OMR with Cpt. Hughes, Lt. Green and 3 other officers to "go over" my grievances. The Cpt. refused to look at the tape of number 3 above or interview any witnesses to the events.

8. On 8/1/14 I was called to the office where the reply to my first and second grievances were read to me in front of Cpt. ~~Green~~ Hughes, Lt. Green, the case manager and 2 other officers.
9. I was told my grievances were newswires and without merit and all of my remedies were denied. I was required to sign the grievance replies and indicate if the grievances were resolved or not on the Captains desk in front of him with the Lieutenant standing at parade rest 5 feet behind me.
10. On 8/1/14 I filed a grievance against Cpt Hughes charging him with breaking policy as found in AEO2 - Officer code of conduct in 5 particulars and FDO2 in 2 particulars including dereliction of duty.
11. On 8/7/14 Cpt Hughes called to the block officer and told him to roll me up as I was moving to the lower oquirrks. The block officer asked why as I was a respectful and trouble free inmate but the Captain told him to just get me moved.
12. On 8/11/14 received a grievance problem form stating that my grievances would not be allowed to go forward as I no longer lived on the block so I was no longer affected.

13. ~~8~~ This form was sent by Defendant Billie Casper who is also the person who would have received my grievance filing against Cpt. Hughes and informed him of it as the Prison Grievance coordinator.
14. ~~8~~ Subsequently, Billie Casper has used many duplicit and unethical grievance handling techniques to attempt to prevent any of my grievances from going forward which one too involved for explanation in this complaint but which I can demonstrate at trial.
15. ~~8~~ Billie Casper would not permit the grievance against Cpt Hughes (see 10 above) to even be filed
16. Block Oquirrh 5 is a privatized housing block with no locks on the doors and big windows that open and a dorm setting that ~~prevents~~ decreases the danger of rape or assault that is found in 2 man cells.
17. I have never had a writeup and know of no condition or event that would have caused me to be moved off of Oquirrh 5 other than my filing of the grievances.
18. All of the above would have a chilling effect on a normal person who was trying to file a grievance or gain access to the courts.

19. On 10/13/14 I submitted an earlier version of this complaint to the contract attorneys for them to assist me in its preparation.
20. The contract attorneys contract states that they will prepare and return complaints within 7 business days.
21. On 10/30/14 I sent the contract attorneys a letter asking the status of my complaint and requesting it completed and returned in a timely fashion. I received no reply.
22. On 11/8/14 I filed a grievance against the contract attorneys for not preparing my complaint in a timely manner and longer than they ~~contract~~ contracted to do so.
23. On 11/17/14 the complaint was returned to me with nothing done and a single piece of case law that does not apply to this case. The contract attorneys declined to assist me stating that the case was frivolous. This was done in retaliation for the above grievance.

Injury Continued

D.1. g) I will require dialysis sooner than I should have.

h) I will require a kidney transplant sooner than I should have.

i) I could have difficulty fathering children.

j) I was not assisted by the contract attorney in preparing this complaint.

k) I was moved out of preferred housing.

l) my life has been shortened.

F - Request for Relief

1. Award plaintiff compensatory damages joint and several against defendants commensurate with the injury he suffered.
2. Punitive damages awarded to the plaintiff against the defendants that the court deems proper.
3. Grant an injunction against the UDC and the USP that EMT's are not qualified to determine medical need and cannot serve as gatekeepers to medical care.
4. Grant an injunction against the UDC and the USP that inmates with complaints that if true would threaten their lives or their limbs must be evaluated by a doctor before being released from care or else they must sign a release form.
5. Award plaintiffs costs and pre-judgment interest.
6. Any other declarations, orders, injunctions, or awards the court deems proper and just.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. §1746; 18 U.S.C §1621.

Executed at USP Draper, Utah on Feb 3 20 15.
(Location) (Date)

Bret MacArthur
Signature

Bret MacArthur